

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

R. KEITH CHRISTENSEN, Trustee, and )  
MARIAN I. CHRISTENSEN, Trustee, )  
  )  
  )  
Plaintiffs,                        )                                    8:03CV478  
  )  
  )  
vs.                                    )                                    ORDER  
  )  
  )  
UNITED STATES OF AMERICA,        )  
Department of the Interior,        )  
Bureau of Reclamation,            )  
  )  
  )  
Defendant.                        )

This matter is before the Court on the defendant's Motion in Limine or For Partial Summary Judgment (Filing No. 62).<sup>1</sup> The defendant filed a brief (Filing No. 63); reply brief (Filing No. 69) and an index of evidence (Filing No. 70) in support of the motion. The plaintiffs filed a brief (Filing No. 64) opposing the motion in limine and a brief (Filing No. 67) opposing the partial summary judgment portion of the motion.

The defendant's motion seeks to "preclude Plaintiff from presenting evidence in support of any claimed prescriptive easement across the federal land at issue in this matter for the reason that prescriptive easements are not available against the United States and hence the United States is entitled to partial summary judgment on such issue." **See** Filing No. 62. The plaintiffs agree. The plaintiffs state "Plaintiffs do not claim a prescriptive easement across the Defendant's land." **See** Filing No. 67, p. 2.<sup>2</sup>

The plaintiffs elaborate that their claims are based upon an implied or express easement across the defendant's property. ***Id.*** While the plaintiffs dispute whether Judge Pratt correctly granted summary judgment in favor of the defendant on the issue of whether

---

<sup>1</sup>The undersigned magistrate judge exercises jurisdiction over this matter after consent by the parties and transfer by United States District Court Judge Robert W. Pratt. **See** Filing No. 61.

<sup>2</sup>The issue of a prescriptive easement was discussed in Judge Pratt's Order on the parties' cross motions for summary judgment. **See** Filing No. 59, p. 15-17.

they enjoy an express easement, such issue is not properly before this Court. Similarly, the defendant's arguments associated with a necessary easement are not properly before the Court.

Accordingly, based on the defendant's motion for partial summary judgment regarding the issue of a prescriptive easement and the plaintiffs' concession no prescriptive easement exists, the defendant's motion will be granted. Therefore, the issue of whether a prescriptive easement exists will not be an issue at trial in this matter. Upon consideration,

**IT IS ORDERED:**

The defendant's Motion in Limine or For Partial Summary Judgment (Filing No. 62) is granted. No issue remains for trial regarding whether the plaintiffs claim a prescriptive easement exists over the subject federal land.

DATED this 11th day of May, 2005.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge